

Response to Comments for Maine's 2005 Multi-Sector General Permit For Stormwater Discharge Associated with Industrial Activity

Comment: The jurisdiction requirement and definition of "point source" is a provision of federal law, see 33 USC 1311, 1362(14), and not just the cited Maine statutes and regulations. Under the many federal court decisions interpreting these provisions, the definition of "point source" is far broader than the list included in the citations contained in the MSGP. To avoid confusing industrial operators who may not be aware of this fact, we recommend that the MSGP and subsequent guidance include citations to federal statutes and case law explaining the broader, controlling explanation of the term point source.

Response: The state definition is contained in rule in 06-096 CMR 520(2). These rules are periodically updated to reflect federal statutory and regulatory changes. It should be noted that the list of activities in the state and federal definition of "point source" is explicitly open-ended, allowing the Department to identify additional activities where appropriate.

Comment: Similarly, the reliance on the term "directly" in the phrase "which discharges directly to a surface water body, wetland or separate storm sewer system" may also confuse or mislead some operators as to their need to obtain a permit. Again, the definition of discharge is a federal jurisdictional requirement and federal statutes and case law are controlling and far broader. See 38 USC 1362(12) (any addition of any pollutant to navigable waters from any point source). We recommend using the federal citations in both the MSGP and guidance.

Response: The terms "direct discharge" and "point source" are defined the same and used interchangeably. See 38 MRS 466(5) and 06-096 CMR 520(2), as in the text "[t]his general permit authorizes the direct discharge (point source discharge) of storm water associated with an industrial activity." However, we agree there is a concern that "discharges directly" may be read by some as a limitation beyond that inherent in the definition of "point source" or "direct discharge" and thereby cause confusion. The text will be modified to remove the adverb "directly" where it appears before "discharge" in one place in the draft MSGP.

Comment: Part 1 (C)(1) Authorization does not include provisions for new facilities or transferred ownership

Response: The Department agrees with this comment and has added the following language to the permit: A Notice of Intent for permit coverage must be submitted for a new facility or for an existing facility where ownership has been transferred prior to commencement of operations or the transfer of ownership. A SWPPP must be prepared before submitting the Notice of Intent.

Comment: Part II(D)(2) requires public access to each SWPPP if requested in writing. It should also require the company to release to the public inspection reports, monitoring data, and other reports or data related to compliance with the SWPPP or MSGP.

Response : Part VII(R) states in part that: Except for data determined to be confidential, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the MDEP at 28 Tyson Drive, Augusta Maine. Effluent data shall not be considered confidential. Monitoring data and inspection reports must be included in the SWPPP document.

Comment: Section I(B)(3) must exclude from coverage any relevant discharges listed in 38 M.R.S.A. § 464(4)(A).

Response: The Department concurs and has revised the MSGP to include language from DEP Rule Chapter 529 which also prohibits these discharges.

Comment: Section I(B)(3)(d) excludes general permit coverage in situations where the discharger contributes to a water quality violation (i.e. into waters listed on the 303(d) list) or contributes significant levels of pollution. Section I(B)(3)(h) would allow discharges to 303(d) listed waters, so long as the discharge is consistent with an approved TMDL. Section IV(L)(2) establishes requirements to revise or update a SWPPP, but does not include situations where water quality violations or non-attainment occurs. Given the potentially large number of facilities that are located in non-attainment watersheds, some of which have TMDLs in process, clarification of these issues is very important. Generally, we would recommend the process set out in EPA's 2000 MSGP § 3.3 (Discharge Compliance with Water Quality Standards). See 65 Fed. Reg. 64811-12; which requires that a determination of non-attainment or violation of water quality standards will trigger the obligation to revise a SWPPP and reduce contaminated runoff sufficient to comply with applicable standards, and if that is not possible, to obtain an individual permit. Additionally, we note that since industrial stormwater is a point source discharge, section I(B)(3)(h) should only apply where discharges are consistent with enforceable "waste load allocations" established in a TMDL.

Response: The Department concurs that Part IV(L) should require updating of the SWPPP where information becomes available of a water quality violation. Section IV.L.3 has been added to provide for this.

Comment: It is unclear how the table in section II.B applies to facilities that must meet federal New Source Performance Standards or effluent guidelines. The permit should expressly provide that activities that match the listed SIC codes must meet NSPS and effluent guidelines established in federal regulations, as listed in the table.

Response: The Department has added the following language in Part II(B) for further clarification; Those stormwater discharges subject to the effluent guidelines listed in the following table are eligible for coverage under this permit, provided that activities match the listed activity or SIC codes and meet effluent guidelines established in federal regulations

Comment: Sections IV(C), IV(G) and IV(M)(3) should clarify that DEP reserves the right to take enforcement action where a facility has violated permit requirements or failed to adequately maintain its SWPPP.

Response: The Department has added the following language in Part IV(K)(3): Notwithstanding the timeframes described above, the Department reserves the right to take appropriate enforcement actions for unpermitted discharges and non-compliance with the requirements of this permit.

Comment: Sections IV(C), IV(G) and IV(M)(3) allow 60 or 90 days to update defective SWPPPs. While some time may be necessary to make necessary changes, the proposed periods are excessive and violate the deadlines for compliance with the Clean Water Act pursuant to 33 U.S.C. § 1311(b). We recommend DEP require that such revisions be required prior to the next storm event, or as soon as practicable, and in no case later than 30 days. For structural BMPs, the permit should require revisions be implemented prior to the next storm event, or as soon as practicable, and in no case later than 12 weeks.

Response: The Department has changed the permit to reflect that the permittee will have 60 days to modify the SWPPP. For additional clarification in Part IV(G) the following language was added: The Department will take into account the size and cost of the project, the need to obtain supplies, construction timeframes, weather, the amount of pollution discharged and the condition of receiving waters. In Part IV(M) The permittee must complete revisions to the SWPPP and implement non-structural BMPs within 60 calendar days following the inspection. If existing structural BMPs need to be modified or if additional structural BMPs are necessary, implementation must be completed before the next anticipated storm event, if practicable, but not more than twelve (12) weeks after completion of the comprehensive site evaluation

Comment: Section V(B)(3) should specify that when sampling from only one of two or more substantially identical outfalls, the discharger must alternate outfalls sampled during each testing period.

Response: The Department agrees with this comment and has added the following language: If the facility has two (2) or more outfalls that the permittee believes discharge substantially identical effluents, based on similarities of the industrial activities, significant materials or stormwater management practices occurring within the outfalls' drainage areas, the permittee may test the effluent of just one of the outfalls during that sampling period provided that subsequent samples are taken from a different substantially identical outfall(s) during each successive monitoring period and report that the quantitative data also applies to the substantially identical outfall(s). For this to be permissible, the permittee must describe in the SWPPP the following: locations of the outfalls; why the outfalls are expected to discharge substantially identical effluents; estimates of the size of the drainage area (in square feet) for each of the outfalls; and an estimate of the runoff coefficient of the drainage areas (low: under 40 percent; medium: 40 to 65 percent; high: above 65 percent).

Comment: Public Notice: DEP should provide a means for public access to NOIs, either by using a searchable online database similar to EPA, or by requiring each facility to post a public electronic copy (pdf) of their NOI the internet.

Response: The Department will provide the public with access to NOIs at its Augusta office upon request. While the Department would like to establish a searchable online database similar to EPA's, resources are insufficient to accomplish this in the short term, and no timetable has been established for when it might occur. The Department does not believe that requiring each facility to post a public electronic copy of their NOI on the internet is practical given that many facilities may lack the resources to accomplish this, and even if they do have the resources, in many cases the public would not know where to find them.

Comment: We note that since industrial stormwater is a point source discharge, section I(B)(3)(h) should only apply where discharges are consistent with enforceable "waste load allocations" established in a TMDL.

Response: Section I(B)(3)(h) already states that "stormwater associated with industrial activity discharging into any water for which a TMDL has either been established or approved by the EPA unless the stormwater discharges are consistent with that TMDL" are not authorized. If there are enforceable "waste load allocations" established in a TMDL that pertain to stormwater, then the discharge would need to be consistent under the existing language. No change is needed.

Comment: Note in IV(F)(7)(b)(ii). includes reference to three publications. Since publications may get replaced over the five year permit period, it may be better to make a general statement about contacting DEP for current BMP manuals, guidance or handbooks.

Response: The Department concurs and has revised the note accordingly.

Comment: The salt storage requirements in Part IV(O). may be better served by referencing statute 38 MRSA §413 2-D, and applicable Chapter 574 regulation.

Response: The Department concurs and has added a note referencing the above statute and rule.

Comment: This comment refers to Sector A. round log storage. Are these areas subject to yearly numeric limitations if there is no wet deck spray-down of these areas? Are the quarterly evaluations and monitoring as required in the permit adequate?

Response: Numeric limitations do not apply to round log storage if there is no wet deck spray associated with the pile. The quarterly visual monitoring and quarterly inspections are adequate.

Comment: Several comments were received regarding the Comprehensive Site Evaluations in Part IV(K) of the permit.

Response: Under EPA's MSGP many permittees were required to conduct quarterly bench mark monitoring in years two and four. The draft 2005 EPA MSGP requires every Sector covered to monitor for at least one parameter. The Department feels that these data may not accurately indicate whether pollution controls were functioning as intended. Maine's permit focuses on being proactive to ensure that in addition to visual monitoring requirements, routine quarterly site inspections are conducted to evaluate the effectiveness of the SWPPP, and certify that BMPs are functioning as intended, follow-up actions are conducted in a timely manner and that the SWPPP is amended as needed. The Department believes that this pollution prevention approach coupled with facility audits from Department staff will not only determine the effectiveness of BMPs "on the ground," but will also yield better environmental protection in reducing polluted stormwater runoff associated with industrial activity(s).

Comment: This comment pertains to Comprehensive Site Evaluations in Part IV(K) of the permit as they apply to Sector S facilities. There are two conditions for airports that effect waters of the State and they are deicing or not deicing. As Appendix S points out Sector S is already required to inspect waterways during deicing season monthly unless the stream is impacted (see Birch Stream) in which case I must perform an inspection weekly (please don't forget all the paperwork as well as any follow up action that must be taken to correct discrepancies). Also I still have an annual comprehensive site evaluation listed here that must or should be done while deicing operations could or are being conducted.

Inspections. (See also Part IV.F.7.b.i) Specify the frequency of inspections in the SWPPP. At a minimum they must be conducted monthly during the deicing season. If the facility needs to deice before or after this period, expand the monthly inspections to include all months during which deicing chemicals may be used. Also, if significantly or deleteriously large quantities of deicing chemicals are being spilled or discharged, or if water quality impacts have been reported, increase the frequency of the inspections to weekly until such time as the chemical spills / discharges or impacts are reduced to acceptable levels. The Department may specifically require the permittee to increase inspections and SWPPP reevaluations as necessary.

e. Comprehensive Site Compliance Evaluation.

(See also Part IV.K) Using only qualified personnel, conduct the annual site compliance evaluations during periods of actual deicing operations, if possible. If not practicable during active deicing or the weather is too inclement, conduct the evaluations when deicing operations are likely to occur and the materials and equipment for deicing are in place.

To change the Comprehensive site evaluation to a quarterly event for the airport would not accomplish anything other than increasing my workload without any real reason or result.

Response: As mentioned in the response above, quarterly inspections are to determine if BMPs are functioning as intended, and that proper pollution prevention measures are being implemented and pollutant discharges are minimized. The intent is not to generate

unnecessary paperwork, but to document areas or activities where maintenance is required or additional treatment is needed. These inspections are necessary during periods when deicing activities are not a factor to evaluate and document conditions including but not limited to: good housekeeping and pollution prevention measures; evaluation of potential pollutant sources; spills and leaks; storage and maintenance areas; BMPs and any non-stormwater discharges associated with Sector S. facilities. It is not the intent of this General Permit for Sector S facilities to conduct five comprehensive inspections as noted in Appendix S of Maine's MSGP. Permit language in Sector S(5)(c)(7)(e) will be changed to reflect that, and has been changed to: Using only qualified personnel, conduct one of the Comprehensive Site Compliance Evaluations during periods of actual deicing operations, if possible.

Comment: Is it possible to have a stormwater discharge without a rain event?

Response: Yes, snowmelt runoff may be sampled provided that the owner's or operator's SWPPP addresses a sampling strategy to address this type of stormwater runoff.

Comment: Is new cell construction associated with landfills required to seek separate coverage under Maine's Construction General Permit?

Response: The Department views new cell construction as maintenance of the facility. A separate MSGP for this activity is not required. To further clarify this the following language was added to Appendix L: Stormwater discharges associated with new cell construction are also covered for Sector L facilities provided that the new construction areas are addressed in the facility's SWPPP.

Comment: NOI Requirements in Part III(A), states: An NOI must be submitted to the Department with the appropriate fee, with failure of proper payment resulting in summary rejection of the NOI. The Department should let people know where they can find the fee amount.

Response: The Department has received authority to charge up to \$350 for the first permit year. The Department has assessed a \$300 fee for the first permit year. This \$300 fee must be submitted with the NOI. This fee is identified on the NOI form, and states that checks are made payable to Treasurer, State of Maine.

Comment: Does this permit intend to require permit coverage for Municipal Transfer Stations, and materials recycling facilities ("MRFs") pursuant to Sector N.?

Response: No. Separate permit requirements have been established pursuant to Maine's Solid Waste Regulations for recycling facilities commonly referred to as a transfer station, that only receive source-separated recyclable materials primarily from non-industrial and residential sources (i.e., common consumer products including paper, newspaper, glass, cardboard, plastic containers, aluminum and tin cans). Coverage for MRFs that are non-municipal or quasi-municipally owned or operated will be evaluated on a case by case basis. If these facilities are licensed pursuant to the Department's Solid Waste regulations and stormwater discharges are adequately addressed, the Department

will evaluate the need for coverage under the MSGP and determine if additional coverage is required.

Comment: The term alternative general permit is used in the MSGP. Is there another permit option which will be made available?

Response: At this time the Department has not developed an alternative General Permit for these types of discharges. However the Department left this language in this General Permit as a “place holder” in case an alternative general permit is developed during the effective period of Maine’s MSGP.

Comment: Does a company that leases property at a facility that has an industrial activity with a stormwater discharge need to file a separate NOI and develop and implement their own SWPPP? What about semi-permanent contractors that operate on site?

Response: Industrial activities that are owned or operated by a separate entity or tenant that qualify for coverage under Maine’s MSGP will have to submit a separate NOI and develop and implement their own SWPPP. For example if a paper mill facility leases property to a person (see definition in MSGP) that operates a landfill requiring coverage in the MSGP, the owner or operator of the landfill will need to file a separate NOI and comply with the terms and conditions of the General Permit. If the owner or operator of the paper mill facility referenced above, owns or operates a landfill as part of its facility a separate NOI and SWPPP are not required. The landfill would be included in the facility’s SWPPP. Only Industrial Activities listed in Table 1. of Maine’s MSGP are required to seek coverage for a stormwater discharge associated with industrial activity.